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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/805,681

03/19/2004

LaShurya M. Wise

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57618 7590 04/13/2009

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EXAMINER

SUTTON, ANDREW W

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

04/13/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/805,681	Applicant(s) WISE ET AL.	
	Examiner ANDREW W. SUTTON	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 59-70 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 59-70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/25/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 59-60 and 65-70 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The applicant states in claim 59 a majority of the first and second yarns are formed from synthetic polymer filaments. The applicant further states in claim 65, "the second yarn being formed of moisture absorptive polyester filaments and lesser moisture—absorbance filaments." The applicant further states in claim 65, "the second yarn being formed of moisture absorptive polyester filaments and lesser moisture—absorbance polyester filaments." The applicant failed to disclose the above teaching in the original filed disclosure.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 59-64 rejected under 35 U.S.C. 103(a) as being unpatentable over Imamichi (US 4,267,710) in view of Jones (US 4,706,304). Imamichi discloses (abstract) a double-knit fabric composed of polyester and cotton fibers. The cotton yarn has a first degree of water absorbency and a first degree of dimensional-transformation upon exposure to water. The synthetic fibers have a second degree of water absorbency and a second degree of dimensional-transformation upon exposure to water. The fabric is a double knit as stated above, thus is mechanically manipulated. Fig. 3 shows the cotton yarn 3 to the rear of the synthetic yarns 1 and 2. Cotton is a fiber that is hydrophilic which means it absorbs water, which causes the diameter of the fiber to grow. When the water exposed to it, the hydrophilic yarn (cotton) would absorb water, thus increasing in size as stated above. This reaction modifies the first structure of the fabric to a second when exposed to water as claimed. The increased diameter of the cotton yarn would "project" nodes onto the surface of the fabric, as the cotton yarns would be larger in diameter thus pushing the synthetic yarns outward creating nodes. Both the natural and synthetic fibers contribute into the node formation and the node formation would be spaced out across the garment from the intersection of the yarns. Imamichi states in Col. 2 lines 38-40, "invention may be advantageously sewn into various sports wear such as shirts..." Imamichi teaches the use of a cotton yarn as

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disclosed above. Imamichi does not teach the use of a synthetic yarn as claimed.

Jones teaches the use of cotton or rayon for use in a knitted garment (Col. 2 lines 54-56). It would have been obvious to one of ordinary skill in the art to modify the device of Imamichi with that of Jones as the fibers are commonly known in the art to be interchangeable for the construction of a fabric.

Claims 65-68 and 69-70 rejected under 35 U.S.C. 103(a) as being unpatentable over Imamichi (US 4,267,710) in view of Jones (US 4,706,304) in further view of Doi (US 6,403,216). Imamichi discloses (abstract) a double-knit fabric composed of polyester and cotton fibers. The cotton yarn has a first degree of water absorbency and a first degree of dimensional-transformation upon exposure to water. The synthetic fibers have a second degree of water absorbency and a second degree of dimensional-transformation upon exposure to water. The fabric is a double knit as stated above, thus is mechanically manipulated. Fig. 3 shows the cotton yarn 3 to the rear of the synthetic yarns 1 and 2. Cotton is a fiber that is hydrophilic which means it absorbs water, which causes the diameter of the fiber to grow. When the water exposed to it, the hydrophilic yarn (cotton) would absorb water, thus increasing in size as stated above. This reaction modifies the first structure of the fabric to a second when exposed to water as claimed. The increased diameter of the cotton yarn would "project" nodes onto the surface of the fabric, as the cotton yarns would be larger in diameter thus pushing the synthetic yarns outward creating nodes. Both the natural and synthetic fibers contribute into the node formation and the node formation would be spaced out across the garment from the intersection of the yarns. Imamichi states in Col. 2 lines

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38-40, "invention may be advantageously sewn into various sports wear such as shirts..." Imamichi teaches the use of a cotton yarn as disclosed above. Imamichi does not teach the use of a synthetic yarn as claimed. Jones teaches the use of cotton or rayon for use in a knitted garment (Col. 2 lines 54-56). It would have been obvious to one of ordinary skill in the art to modify the device of Imamichi with that of Jones as the fibers are commonly known in the art to be interchangeable for the construction of a fabric. Jones and Imamichi do not teach the second yarn being made of a moisture absorptive polyester filament and a lesser absorptive polyester filament. Doi teaches a composite yarn with a high moisture absorbent core with a low moisture absorbent sheath. Doi further teaches the moisture absorbing and moisture permeability is often related to polyester. It would have been obvious to one of ordinary skill in the art to modify the teachings of Imamichi with the composite yarn of Doi to the first and/or second yarn to provide desirable moisture properties to the fabric.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW W. SUTTON whose telephone number is (571)272-6093. The examiner can normally be reached on Monday - Thursday 8:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary L. Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AWS

8 April 2009

/Shaun R Hurley/

Primary Examiner, Art Unit 3765